

September 7, 2001

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: King County Department of Transportation File No. **V-2367**
Proposed Ordinance No. **2001-0353**

MIKE FINNEGAN, ET AL
Petition For Road Vacation

Road: Southeast 127th Street and 439th Avenue Southeast, as dedicated in the
Plat of Riversi Estates, Vol 161 of Plats, p. 18-20

Petitioners: Mike Finnegan
43929 Southeast 127th Place
North Bend, WA 98045

SUMMARY OF RECOMMENDATIONS:

| | |
|---------------------------|--------------------------------|
| Department's Preliminary: | Approve, subject to conditions |
| Department's Final: | Approve, subject to conditions |
| Examiner: | Approve, subject to conditions |

DEPARTMENT'S REPORT:

The Department of Transportation's written report to the King County Hearing Examiner for Item No. V-2367 was received by the Examiner on July 27, 2001.

PUBLIC HEARING:

After reviewing the Department of Transportation's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on Item No. V-2367 was opened by the Examiner at 2:30 p.m., Wednesday, August 22, 2001, in the King County Courthouse, Snoqualmie Room, Room 402, 516 – 3rd Avenue, Seattle, Washington, and closed at 3:00 p.m. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:
Road name and location: Southeast 127th Street and 439th Avenue Southeast, as dedicated in the plat of Riversi Estates, Vol 161 of Plats, p. 18-20
Right of way classification: "B Class"
Area: Approximately 52,000 Square Feet
Compensation: \$61,185.95
2. Except as provided below, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department of Transportation's report to the King County Hearing Examiner for the August 22, 2001, public hearing and the statement of facts contained in Proposed Ordinance No. 2000-0353.1, July 27, 2001 draft. The said reports will be attached to the copies of this report and recommendation submitted to the King County Council.
3. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are Attachments 1 and 2 to this Report and Recommendation.
4. Vacation of the subject right-of-way would have no adverse effect on the provision of fire and emergency services to the subject property or surrounding area.
5. The Washington Department of Natural Resources is in the process of establishing a new trailhead and parking lot for the Little Si trail to be located directly opposite the entrance to the Riversi Estates Subdivision. Riversi Estates is a nine lot plat served by the roads proposed to be vacated, 439th Place Southeast and Southeast 127th Place. Due to the popularity of the Little Si trail, there is an expectation that overflow parking from trail users' vehicles will invade the Riversi Estates neighborhood and the streets of the subdivision will be used for vehicle turnaround maneuvers.
6. The Department of Natural Resources has solicited the Riversi lot owners and their home owners' association to petition for the vacation of 439th Place Southeast and Southeast 127th Place so that, as private facilities, appropriate actions may be taken to discourage hikers' use of the subdivision's streets. The proposed roads to be vacated will not become useless in the literal sense of having no value to vehicles, but rather in the more limited sense that the public interest would be better served if the roads were privatized. The Department of Natural Resources recommends that the compensation due for the vacated roads also be waived.
7. A complication arises from the fact that the RiverSi Estates Owner's Association has yet to successfully negotiate easement agreements with the various utilities that have facilities and services within the existing rights-of-way. The Association has rejected the standard easement agreements offered by the various utilities and is attempting to negotiate more restrictive agreements with each of the affected purveyors. While this process appears to be nearing completion, it would be premature to finally approve the requested road vacation until the necessary easements have been concluded. To that end, the Department of Transportation's proposed ordinance has been amended to include a new section that postpones the effective date of the vacation until the Council Clerk has been notified that the required easements have been executed.

CONCLUSIONS:

1. The roads subject to this petition are useless as part of the King County road system, and the public will be benefited by their vacation.
2. The notice of hearing on the report of the Department of Transportation was given as required by law, and a hearing on the report was conducted by the King County Hearing Examiner on behalf of the Metropolitan King County Council.
3. King County will be benefited if the compensation required by law to be paid as a condition precedent to the vacation of these roads is waived.

RECOMMENDATION:

APPROVE proposed Ordinance No. 2001-0353 to vacate the subject road, subject to a pre-effective condition requiring execution of necessary utility easements.

RECOMMENDED this 7th day of September, 2001.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 7th day of September, 2001, to the following parties and interested persons:

Thomas A. & Mary Abbott
17051 - 428th Pl. SE
North Bend WA 98045

Steve Botts
Puget Sound Energy
P.O. Box 97034/MS - OBC 11N
Bellevue WA 98009-9734

Century Tel
8120 Sakanise Avenue
Gig Harbor WA 98332-2415

David & Elaine Eva
43905 SE 127th Pl.
North Bend WA 98045

Audrey M. Finnegan
43929 SE 127th Pl.
North Bend WA 98045

Mike Finnegan
43929 SE 127th Pl.
North Bend WA 98045

Ken Humbert
A T & T Cable Services
4020 Auburn Way North
Auburn WA 98002

John Day Homes Inc.
13130 - 47th Ave. SE
North Bend WA 98045

North Bend Utilities
P.O. Box 896
North Bend WA 98045

Philip M. & Helen O'Brien
43911 SE 127th Pl.
North Bend WA 98045

Troy & Kelly Thompson
13031 - 44th Ave. SE
North Bend WA 98045

Charlie Sundberg
Office of Cultural Resources
Landmarks & Heritage Program
MS STR-CR-0200

W. M. Dev. Co.
P.O. Box 29
North Bend WA 98045

Greg Borba
DDES/LUSD
MS OAK-DE-0100

Tommy Burdette
King County Dept Transportation
Engineering Services Division
MS KSC-TR-0231

Clerk of the Council
MS KCC-CC-1025

Thomas Eksten
King County Office of Open Space
MS LBP-PR-0100

David Gaultieri
KCDOT
Comp Long Range Planning
MS KSC-TR-0813

Dennis Gorley
Dept of Transportation
Road Services Division
MS KSC-TR-0231

Trish Gustafson
KC Property Services Division
MS ADM-CF-0500

Kelly Heintz
Department of Natural Resources
Resource Lands & Open Space
MS CEN-NR 0350 King County

King County Parks Division
MS LBP-PR-0100

Kristen Langley
KCDOT
Roads Division
MS KSC-TR-0222

Roderick E. Matsuno
KC Dept. of Transportation
Road Maintenance Section
MS RSD-TR-0100

METRO/Environmental
Environmental/Real Estate
MS-KSC-NR-0600

Ronald J. Paananen
KCDOT Road Svcs Div
County Road Engineer
MS KSC-TR-0231

Lydia Reynolds-Jones
King County Dept Transportation
Manager/Project Support Services
MS KSC-TR-0231

Faith Roland
METRO Environ Planning
Real Estate
MS KSC-NR-0600

Catherine A. Drews
Preston Gates Ellis
701 Fifth Ave., Ste. 5000
Seattle, WA 98104-7078

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) on or before **September 21, 2001**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before **September 28, 2001**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE AUGUST 22, 2001 PUBLIC HEARING ON KING COUNTY DEPARTMENT OF TRANSPORTATION ROAD SERVICES DIVISION FILE NO. V-2367 – MIKE FINNEGAN, ET AL:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Tommy Burdette. Participating in the hearing was Mike Finnegan, petitioner. The other participants in this hearing were Catherine A. Drews from Preston Gates Ellis and Kelly Heintz from WA DNR.

The following exhibits were offered and entered into the record on August 22, 2001:

- Exhibit No. 1 Report to the Hearing Examiner, dated July 27, 2001 with 40 attachments
- Exhibit No. 2 Petition transmittal letter dated January 28, 1998, to KCDOT from the Clerk of the Council
- Exhibit No. 3 Petition for Vacation of a County Road including legal descriptions of Petitioner's properties
- Exhibit No. 4 Letter of explanation dated January 26, 1998 from Mike Finnegan and Others dated January 26, 1998
- Exhibit No. 5 Copy of Assessor's map with legal description
- Exhibit No. 6 Copy of filing fee – check #0103
- Exhibit No. 7 Vicinity Map
- Exhibit No. 8 GIS map depicting vacation area
- Exhibit No. 9 Letter dated February 17, 1998 to petitioner explaining the road vacation process
- Exhibit No. 10 Letter dated March 25, 1998 from Washington State Department of Natural Resources to staff requesting the Council to waive the compensation
- Exhibit No. 11 Letter dated December 3, 1998, from Department of Natural Resources requesting to be added to the mailing list
- Exhibit No. 12 Road vacation worksheet V-2367.XLS revised
- Exhibit No. 13 Letter dated December 3, 1998 from the DOT, Division of Roads and Engineering to the Clerk of King County Council
- Exhibit No. 14 Letter dated April 16, 1999 to Mike Finnegan from Roads Division identifying amount of compensation and what is needed in lieu of that compensation
- Exhibit No. 15 Letter dated August 18, 1999 from Petitioner's attorney to staff transmitting sample Quit Claim Deed
- Exhibit No. 16 Email dated January 28, 2000 between Petitioner and WSDNR explaining the difficulties in getting quit claim deed signed
- Exhibit No. 17 Email dated September 3, 2000 from Petitioner to staff explaining ownership issues
- Exhibit No. 18 Email dated November 7, 2000 informing staff that the missing joint property owner has been located and explaining the difficulties with the utility companies and requesting assistance
- Exhibit No. 19 Email dated November 14, 2000 from WSDNR inquiring about the county installing no parking and private road signs
- Exhibit No. 20 Email dated November 15, 2000 from Petitioner to inform staff that he had received signed vacation documents
- Exhibit No. 21 Email dated November 20, 2000 from staff responding to WSDNR November 14, 2000 inquiries
- Exhibit No. 22 Email Dated November 20, 2000 from staff responding to Petitioner's November 7, 2000 request for assistance
- Exhibit No. 23 Email dated November 29, 2000 from staff transmitting King County's standard Utility Easement document

- Exhibit No. 24 Memorandum dated December 18, 2000 from the DOT, Traffic Engineering Section to staff regarding WSDNR's November 14, 2000 inquiries about no parking and private road signs
- Exhibit No. 25 Email dated December 27, 2000 from staff to Petitioner and WSDNR explaining the County's position regarding the installation of the requested signs
- Exhibit No. 26 Copy of letter dated February 12, 2001 from Petitioner to King County, Water and Land Resources Division regarding potential surface water utility fees and transmitting documents for review
- Exhibit No. 27 Letter dated March 7, 2001 from Petitioner transmitting the required documents in lieu of compensation
- Exhibit No. 28 Letter dated June 21, 2001 from King County Executive to Councilmember Pete von Reichbauer
- Exhibit No. 29 Proposed Ordinance 2001-0353
- Exhibit No. 30 Notice of hearing
- Exhibit No. 31 Affidavit of posting with Notice of Hearing
- Exhibit No. 32 Affidavit of publication
- Exhibit No. 33 Email dated August 1, 2001 from RSD to PAO requesting an opinion on the Utility Franchise language
- Exhibit No. 34 Series of Emails dated June 22, August 1 and 2, 2001 regarding Sallal Water District Easement. Copy of easement is attached
- Exhibit No. 35 Series of Emails dated August 1 and 6, 2001 responding to Exhibit 33 Email
- Exhibit No. 36 Email dated August 7, 2001 from PAO to Sallal Water District regarding easement language
- Exhibit No. 37 Series of Emails dated August 2 and 8, 2001 between PAO to HOA regarding Sallal Water District easement
- Exhibit No. 38 Series of Emails dated August 4, 5 and 10, 2001 between HOA and CenturyTel Communications regarding easement language
- Exhibit No. 39 Email dated August 10, 2001 from HOA to PSE transmitting easement (attached)
- Exhibit No. 40 Series of Emails dated August 20, 2001 between HOA and CenturyTel Communications
- Exhibit No. 41 Series of Emails dated August 16, 2001 between HOA Sallal Water District regarding payment of attorney's fees
- Exhibit No. 42
- to Exhibit 50 Letters dated August 17, 2001 from RSD to homeowners transmitting copies of the Report to the Hearing Examiner
- Exhibit No. 51 Email dated August 17, 2001 from PSE to HOA transmitting revised easement
- Exhibit No. 52 Email dated August 19, 2001 from HOA to PSE transmitting revised easement
- Exhibit No. 53 Copy of Tax Assessor's tax printout with the address for Mr. & Mrs. Abbott
- Exhibit No. 54 Copy of return envelope for the Report to the Hearing Examiner to the Abbotts
- Exhibit No. 55 Series of Emails dated August 17 and 20, 2001 between RSD and HOA requesting the Abbott's correct mailing address
- Exhibit No. 56 Email dated August 22, 2001 from HOA to PSE regarding utility easement
- Exhibit No. 57 Fax transmittal cover page dated August 22, 2001 to Ms. Katherine Drews faxing a copy of the Report to the Hearing Examiner and Engineer's Report to the Clerk of the Council

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SECTION 3. This ordinance shall not become effective and no rights-of-way shall be vacated hereunder until the Riversi Estates Owner's Association, and individual lot owners if required, have executed utility easements within the vacation area to Tanner Electric Cooperative, Puget Sound Energy, Sallal Water Association, CenturyTel, and AT&T Broadband. The road vacations engineer within the King County Department of Transportation Road Services Division shall notify the County Clerk in writing when all required easements have been executed, at which time this ordinance shall become effective. If no such notification has been received by the Clerk by December 31, 2001, this ordinance shall expire and become null and void.